***

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 4022 of 2006
Date of decision: 12.11.2007

Beni Parshad **...Appellant**

Versus

Sheela Devi and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Jagdish Manchanda, Advocate for the appellant.

****

RAJESH BINDAL, J.

Defendant No.1 is in second appeal before this Court against the judgment and decree of the learned Lower Appellate Court whereby suit filed by respondent no.1/plaintiff for injunction was decreed.

Briefly the facts are that respondent no.1/plaintiff filed a suit for permanent injunction restraining the defendants therein from interfering in her peaceful possession over the Bara. The claim made was that the Bara was in possession of the husband of respondent no.1/plaintiff whose whereabouts were not known for the last more than 30 years. However, eversince the husband of respondent no.1/plaintiff left the village, she was in possession thereof. Though the trial Court dismissed the suit, however, learned Lower Appellate Court while reversing the judgment and decree of the trial Court, decreed the suit only to the extent that respondent no.1/plaintiff was granted injunction to the extent of her share in the Bara.

The claim set up by the appellant/defendant no.1 is that infact in the family partition whatever property came to the share of respondent no.1/plaintiff, the same was given to her and Bara did not form part thereof. It is not disputed that Bara was ancestral property of both the parties. The settlement arrived at between the parties in the form of document mark 'C' was perused and it was found that it was only with regard to the residential property that mutual understanding was arrived at between the parties. The Bara does not form part of the property mutually partitioned by the parties.

***

Once it is admitted that the Bara was the ancestral property of the parties and further that both the parties are jointly enjoying the same by placing their material, in my opinion, no illegality has been committed by the learned Lower Appellate court in restraining the appellant from interfering in the peaceful enjoyment of her share by respondent no.1/plaintiff.

No substantial question of law arises in the present appeal.

Accordingly, the appeal is dismissed.

November 12, 2007 **(Rajesh Bindal)**
Pka **Judge**